

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.: 3:23-cv-00661-MMD-CSD

MARSHALL BURGESS, JR.,

Plaintiff

v.

WESTLAKE FINANCIAL; DOLAN
TOYOTA,

Defendants

Order

Re: ECF No. 18

Before the court is a motion to dismiss filed by defendant Westlake Services, LLC dba Westlake Financial.¹ (ECF No. 18.) Plaintiff filed a response. (ECF No. 34.)²

For the reasons set forth below, Westlake's motion is granted.

I. BACKGROUND

Plaintiff filed this action against Westlake and Dolan Toyota. Plaintiff alleges that on February 24, 2023, he and his wife went to Dolan Toyota in Reno, Nevada and looked at a car—a 2020 Mazda CX-30. Plaintiff's credit was not good enough, so he was required to provide \$4,500 for a down payment. He alleges that it is illegal to require a down payment in connection with a consumer credit transaction under 15 U.S.C. § 1662b. He also cites 15 U.S.C. § 1635, asserting that it requires the return of money or property following rescission.

¹ Plaintiff named Westlake Financial, the dba of Westlake Services, LLC, in the complaint, but in this Order the court will simply refer to the defendant as Westlake.

² Plaintiff's response states that he has been doing dialysis and is sick which has stopped him from going to the law library. He nevertheless asserts various reasons why Defendants' motions to dismiss should be denied, and did not request additional time to respond to the motions.

1 Plaintiff goes on to allege that on April 13, 2023, Westlake purchased his motor vehicle
2 contract from Dolan Toyota. He contends that \$647.30 was taken out of his bank account on
3 April 11, 2023, and then on April 13, 2023, Westlake took another \$642.30 from his account.
4 When he became aware of this, he called Westlake and asked why he was charged twice for his
5 payment. He asked that they put the second payment back into his account. On April 14, 2023,
6 they returned the \$642.30 to his account.

7 Plaintiff avers he never had a late payment with Westlake, however, later states that in
8 November of 2023, his iPhone was stolen and money was taken out of his bank account. He
9 claims his November payment was stolen from his account, and this is the only time he missed a
10 payment.

11 Plaintiff states that Westlake became mad after he asked them to put the money for the
12 double payment back in his account in April 2023, and retaliated against him by reporting false
13 information to the credit bureaus, Equifax, Experian and TransUnion, causing him financial
14 harm because he was denied home loans and credit cards.

15 Westlake moves to dismiss Plaintiff's complaint, arguing that he fails to state a claim
16 upon which relief may be granted.³

17 II. DISCUSSION

18 A. Legal Standard

19 Federal Rule of Civil Procedure 12(b) contemplates the filing of a motion to dismiss for
20 the failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

21 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab.*
22 *Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). In reviewing the complaint under this
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³ Dolan Toyota has also filed a motion to dismiss, which is addressed in a separate order.

1 standard, the court must accept as true the allegations of the complaint, *Hosp. Bldg. Co. v.*
2 *Trustees of Rex Hosp.*, 425 U.S. 738, 740 (1976), construe the pleadings in the light most
3 favorable to plaintiff, and resolve all doubts in the plaintiff's favor, *Jenkins v. McKeithen*, 395
4 U.S. 411, 421 (1969). This does not apply, however, to "legal conclusions." *Ashcroft v. Iqbal*,
5 556 U.S. 662, 678 (U.S. 2009). "Threadbare recitals of the elements of a cause of action,
6 supported by mere conclusory statements, do not suffice." *Id.* (citation omitted). "While legal
7 conclusions can provide the framework for a complaint, they must be supported by factual
8 allegations." *Id.* at 679.

9 Allegations in pro se complaints are held to less stringent standards than formal pleadings
10 drafted by lawyers, and must be liberally construed. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980);
11 *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (*per curiam*); *Hamilton v. Brown*, 630 F.3d 889,
12 893 (9th Cir. 2011).

13 Under Federal Rule of Civil Procedure 8(a), "a claim for relief must contain...a short and
14 plain statement of the claim showing that the pleader is entitled to relief[.]" Fed. R. Civ. P.
15 8(a)(2). The Supreme Court has found that at a minimum, a plaintiff should state "enough facts
16 to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
17 570 (2007); *see also Iqbal*, 556 U.S. at 678.

18 The complaint need not contain detailed factual allegations, but it must contain more than
19 a "formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555; *see also*
20 *Iqbal*, 556 U.S. at 678. It must contain factual allegations sufficient to "raise a right to relief
21 above the speculative level." *Twombly*, 550 U.S. at 555. "The pleading must contain something
22 more...than...a statement of facts that merely creates a suspicion [of] a legally cognizable right of
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1 action." *Id.* (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, at 235-36
2 (3d ed. 2004)).

3 The Rule 8(a) notice pleading standard requires the plaintiff to “give the defendant fair
4 notice of what the...claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555.
5 (internal quotation marks and citation omitted). “A claim has facial plausibility when the plaintiff
6 pleads factual content that allows the court to draw the reasonable inference that the defendant is
7 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted). “Plausibility” is
8 “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (citation omitted).
9 “Determining whether a complaint states a plausible claim for relief” is “a context-specific task
10 that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at
11 679 (citation omitted). Allegations can be deemed “implausible” if there are “obvious alternative
12 explanation[s]” for the facts alleged. *Id.* at 682.

13 A dismissal should not be without leave to amend unless it is clear from the face of the
14 complaint that the action is frivolous and could not be amended to state a federal claim, or the
15 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
16 1103, 1106 (9th Cir. 1995) (dismissed as frivolous); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th
17 Cir. 1990).

18 **B. Analysis**

19 First, insofar as the complaint can be interpreted as asserting a claim against Westlake for
20 violation of 15 U.S.C. § 1635, Plaintiff fails to state a claim. 15 U.S.C. § 1635 provides that in a
21 consumer credit transaction “in which a security interest ... is or will be retained or acquired *in*
22 *any property which is used as the principal dwelling of the person to whom credit is extended*,
23 the obligor shall have the right to rescind the transaction until midnight of the third business day

1 following the consummation of the transaction or the delivery of the information and rescission
2 forms[.]” 15 U.S.C. § 1635(a) (emphasis added). “When an obligor exercises his right to rescind
3 under subsection (a) ...[w]ithin 20 days after receipt of a notice of rescission, the creditor shall
4 return to the obligor any money or property given as earnest money, downpayment, or otherwise,
5 and shall take any action necessary or appropriate to reflect the termination of any security
6 interest created under the transaction.” 15 U.S.C. § 1635(b).

7 Plaintiff does not allege any facts related to a principal dwelling and his complaint
8 concerns the purchase and financing for a vehicle. Amendment in this regard would be futile,
9 because even if he were to allege that Westlake took a security interest in property used as a
10 principal dwelling, the right to rescind expires midnight of the third business day following
11 consummation of the transaction, and Plaintiff alleges that he continued to make payments on the
12 vehicle for months after the transaction commenced.

13 Next, Westlake argues that Plaintiff fails to state a claim against it under 15 U.S.C.
14 § 1662. The complaint alleges that it was illegal for a down payment to be required, but Plaintiff
15 alleges it was Dolan Toyota that collected the down payment, not Westlake. In any event,
16 15 U.S.C. § 1662 provides: “No *advertisement* to aid, promote, or assist directly or indirectly any
17 extension of consumer credit may state ...(2) that a specified downpayment is required in
18 connection with any extension of consumer credit, unless the creditor usually and customarily
19 arranges downpayments in that amount.” 15 U.S.C. § 1662 (emphasis added).

20 It does not provide that a down payment cannot be collected in a consumer credit
21 transaction. Therefore, Plaintiff does not state a claim against Westlake based on 15 U.S.C.
22 § 1662.

1 Third, Westlake contends that Plaintiff fails to state any claim against it under the Fair
2 Credit Reporting Act (FCRA). Plaintiff references 15 U.S.C. § 1681. However, this section
3 relates to congressional findings and a statement of purpose for the FCRA.

4 The FCRA is designed “to ensure fair and accurate credit reporting, promote efficiency in
5 the banking system, and protect consumer privacy.” *Gorman v. Wolpoff & Abramson, LLP*, 584
6 F.3d 1147, 1153 (9th Cir. 2009) (citation and quotation marks omitted). “[T]o ensure that credit
7 reports are accurate, the FCRA imposes some duties on the sources that provide credit
8 information to a CRA⁴, called ‘furnishers’ in the statute.” *Id.* 15 U.S.C. § 1681s-2 sets forth
9 “[r]esponsibilities of furnishers of information to consumer reporting agencies[.]” *Id.*

10 Under 15 U.S.C. § 1681s-2(a), a furnisher has a duty to provide accurate information.
11 That is to say, they “shall not furnish information relating to a consumer to any consumer
12 reporting agency if the[furnisher] knows or has reasonable cause to believe that the information
13 is inaccurate.” 15 U.S.C. § 1681s-2(a)(1)(A). They may likewise not furnish information to a
14 consumer reporting agency if the consumer has notified them that specific information is
15 inaccurate, and the information is, in fact, inaccurate. 15 U.S.C. § 1681s-2(a)(1)(B)(i)-(ii).

16 The furnisher of credit information also has certain duties if it is notified by a CRA that
17 the consumer disputes the information. These duties include the duty to conduct an investigation
18 with respect to the disputed information. 15 U.S.C. § 1681s-2(b)(1). “[N]otice of a dispute
19 received directly from the consumer does not trigger the furnisher’s duties under subsection (b).”
20 *Gorman*, 584 F.3d at 1154. Instead, notice is required from the CRA.

21 “A consumer may sue a furnisher and recover damages if the furnisher willfully or
22 negligently violated the FCRA.” *Gross v. CitiMortgage, Inc.*, 33 F.4th 1246, 121251 (9th Cir.

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⁴ CRA refers to a consumer reporting agency.

2022) (citing 15 U.S.C. §§ 1681n, 1681o; *Syed v. M-I, LLC*, 853 F.3d 492, 503 (9th Cir. 2017)).
“However, § 1681s-2 limits this private right of action to claims arising under subsection (b), the
duties triggered upon notice of a dispute from a CRA.” *Gorman*, 584 F.3d at 1154 (citing 15
U.S.C. § 1681s-2(c)). “Duties imposed on furnishers under subsection (a) are enforceable only
by federal or state agencies.” *Id.* (citing 15 U.S.C. § 1681s-2(d)).

Plaintiff alleges that Westlake reported false or inaccurate information to the credit
bureaus that he missed a payment. However, this claim is not plausible because Plaintiff admits
that he did in fact miss a payment. While he blames this on his iPhone being stolen, he
nevertheless admits that a payment was missed. Therefore, if Westlake reported to a credit
reporting agency that he missed a payment, this information is accurate. In any event, there is no
private action for a claim that only alleges a furnisher provided a CRA with inaccurate credit
information.

With respect to the double payments that occurred in April, Plaintiff likewise admits that
Westlake refunded him for the double payment the very next day after it was reported.
Therefore, this is not a basis for a claim under the FCRA.

There are no allegations that Westlake failed to undertake any duties imposed on it under
subsection (b), *i.e.*, that Westlake was advised by a CRA of a dispute regarding the completeness
or accuracy of any information provided by Westlake to a CRA. Given the nature of Plaintiff’s
allegations, and his admission that he did in fact miss a payment, it does not appear that he will
be able to amend to assert a claim against Westlake under 15 U.S.C. § 1681s-2(b).

Finally, Westlake asserts that Plaintiff fails to state a claim for retaliation, citing to the
standard for asserting a retaliation claim in the employment context. Plaintiff, of course, does not
state a claim for retaliation arising out of any employment relationship. Nor does Plaintiff

1 otherwise state a plausible claim for retaliation. While there are other federal retaliation claims
2 that may be asserted against State actors, Plaintiff is not asserting any claim against a State actor.

3 In sum, this action will be dismissed with prejudice as to Westlake.

4 **III. CONCLUSION**

5 Westlake's motion to dismiss (ECF No. 18) is **GRANTED**. Plaintiff's claims against
6 Westlake are **DISMISSED WITH PREJUDICE**. The Clerk shall enter JUDGMENT in
7 Westlake's favor.

8 **IT IS SO ORDERED.**

9 Dated: June 7, 2024

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11 Craig S. Denney
12 United States Magistrate Judge
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